STATE LAW LIBRARY OF MONTANA

Joseph P. Mazurek Justice Building
215 North Sanders Street
PO Box 203004
Helena, MT 59620-3004

Website: courts.mt.gov/library
Email: mtlawlibrary@mt.gov
Phone: 406-444-3660
Fax: 406-444-3603

Legislative History – Montana Session Law

Chapter: 181 Session L: 2001
Bill Number: SB 90

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☑
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: State Administration	Committee: State Administration
Hearing Date(s): 03/02/2001	Hearing Date(s): 1/25/2001
Committee Report: 03/08/2001	Committee Report: 1/26/2001

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 05/22/2025

Notes: The Montana Historical Society holds transcripts from committee meetings and they are closed for renovations until 2026.

Thank you!

AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts ~~--~~ ~~local government waiver~~. (1) Members of the legislature; state, county, city, town, or township officers; or any ~~deputy~~ deputies or ~~employee~~ employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded ~~to the lowest responsible bidder or proposer~~ based on competitive ~~bidding~~ procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

~~(c)~~(d) "former employee" does not include a person whose employment with the state was involuntarily terminated ~~due to~~ because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

~~(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:~~

~~(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;~~

~~(b) whether an opportunity was provided for open competitive bidding or negotiation;~~

~~(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and~~

~~(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.~~"

Section 2. Section 2-17-403, MCA, is amended to read:

"2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases ~~shall~~ must be submitted to the department of administration ~~twice yearly at the times~~ in the manner that ~~it~~ the department specifies. ~~Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.~~"

Section 3. Section 7-5-2309, MCA, is amended to read:

"7-5-2309. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is subject to competitive bid under this part, the state resident bid preference provided in 18-1-102(1)(a) applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county."

Section 4. Section 7-14-2404, MCA, is amended to read:

"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract."

Section 5. Section 7-14-2406, MCA, is amended to read:

"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges ~~shall~~ must meet ~~these~~ the following requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

(b) All bids must be sealed. Each bidder ~~shall~~ must meet the requirements of Title 18, chapter 1, part

2.

(2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ may not be completed until the board, while formally convened, affirmatively accepts all of the work ~~thereunder~~ under the contract."

Section 6. Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

Section 7. Section 17-8-244, MCA, is amended to read:

"17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute~~;~~ brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies ~~due to~~ because of natural disasters, disruptions in postal or delivery service, work stoppage ~~due to~~ because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) ~~contracts entered into before October 1, 1983;~~

~~(5)~~ wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(6)~~(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under

the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists."

Section 8. Section 18-1-101, MCA, is amended to read:

"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) ~~"Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c)~~ "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

~~(d)~~(c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

~~(e)~~(d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

~~(f)~~(e) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."

Section 9. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest bidder -- reciprocity. (1) ~~(a) Except as provided in subsection (1)(b), in~~ In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

~~(i)~~(a) a public contract for construction, repair, or public works to the lowest responsible bidder without

regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of ~~any~~ a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

~~(ii)~~(b) a public contract for the purchase of goods~~, if the goods are comparable in quality and performance~~, to the lowest responsible ~~resident~~ bidder ~~whose:~~

~~(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;~~

~~(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or~~

~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.~~

~~(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:~~

~~(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and~~

~~(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:~~

~~(A) the equal and fair treatment of bids originating in the United States and in the foreign country;~~

~~(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;~~

~~(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and~~

~~(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.~~

~~(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:~~

~~(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made;~~

~~and~~

~~(B) not more than 5% higher than that of the nonresident bidder.~~

~~(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%~~ without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws."

Section 10. Section 18-1-103, MCA, is amended to read:

"18-1-103. Resident defined. (1) For the purpose of 18-1-102~~, 18-1-111,~~ and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or ~~an~~ association, the majority of all partners or ~~association~~ members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

~~(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section.~~"

Section 11. Section 18-1-111, MCA, is amended to read:

"18-1-111. Impartiality to be shown in letting contracts ~~-- preference to residents~~. The department may not show any partiality or favoritism not provided for by law in making awards or contracts ~~and shall be~~

~~absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders~~."

Section 12. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- interest -- costs. (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. ~~For purposes of this section~~ If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a ~~judgment~~ decision by the government agency or court. If the contract does not specify when interest is payable before a ~~judgment~~ decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19."

Section 13. Section 18-2-306, MCA, is amended to read:

"18-2-306. Time of final acceptance and final payment on construction contracts -- interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district."

Section 14. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes ~~which~~ that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) ~~It~~ Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. ~~It also~~ The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term ~~also~~ includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~The term~~ Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

Section 15. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body~~, as defined in 18-4-123,~~ under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to

procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 16. Section 18-4-133, MCA, is amended to read:

"18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

~~(3)~~(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract."

Section 17. Section 18-4-141, MCA, is amended to read:

"18-4-141. Contract transfers and collusion prohibited -- violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between ~~bidders~~ vendors for the purpose of securing any advantage to the ~~bidders~~ vendors as against the state in the awarding of contracts ~~is~~ are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a ~~bidder~~ vendor or ~~bidders~~ vendors by reason of collusive or secret agreement among the ~~bidders~~ vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

Section 18. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid ~~which~~ or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 19. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

~~(1)~~(2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

~~(2)~~(3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(3)~~(4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(4)~~(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

~~(5)~~(6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(6)~~(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(7)~~(8) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

~~(8)~~(9) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

~~(9)~~(10) "Responsive bidder" means a person who has submitted a bid ~~which~~ that conforms in all material respects to the invitation for bids.

~~(10)~~(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 20. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection -- authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) ~~At the time that~~ When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122."

Section 21. Section 18-4-306, MCA, is amended to read:

"18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the ~~required~~ supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

~~(2)~~(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

~~(3)~~(4) The record must be available for public inspection."

Section 22. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for the lease or purchase of hardware, software, or services for telecommunications ~~equipment and systems,~~ or data processing, ~~equipment,~~ the department of revenue liquor

agencies, and the department of public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 23. Section 18-5-308, MCA, is amended to read:

"18-5-308. (Temporary) Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now or hereafter amended~~ under those statutes, except that in case of conflict, this part governs and the provisions set forth in 18-1-102~~, 18-1-111, and 18-1-112 shall~~ do not apply. (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)"

Section 24. Section 18-7-107, MCA, is amended to read:

"18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana ~~must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state~~ is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply."

Section 25. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding -- reciprocity. (1) Except as provided in subsections (2) through (5), ~~when~~ if the estimated cost of any work exceeds $50,000, the commission shall ~~let~~ award the contract by

competitive bidding to the lowest responsible and responsive bidder. ~~Award~~ The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 ~~and 18-1-112~~.

(2) The commission may ~~let~~ award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of

that country.

(6) For the purposes of subsection (5), "construction" has the ~~same~~ meaning ~~as is~~ provided in 18-2-101."

Section 26. Repealer. Section 18-1-112, MCA, is repealed.

Section 27. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 18] is effective July 1, 2005.

Section 28. Applicability. [This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001.

Section 29. Termination. [Sections 19 and 20] terminate June 30, 2005.

- END -

I hereby certify that the within bill,
SB 0090, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 90

INTRODUCED BY P. EKEGREN

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS INTERIM COMMITTEE

AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/02/01	Chapter Number Assigned				
04/02/01	(S) Signed by Governor				
03/27/01	(S) Transmitted to Governor				
03/26/01	(H) Signed by Speaker				
03/23/01	(S) Signed by President				
03/22/01	(S) Returned from Enrolling				
03/22/01	(C) Printed - New Version Available				
03/21/01	(S) Sent to Enrolling				
03/21/01	(S) 3rd Reading Passed as Amended by House		47	0	
03/20/01	(S) 2nd Reading House Amendments Concurred on Voice Vote		48	0	
03/20/01	(S) Scheduled for 2nd Reading				
03/17/01	(H) Returned to Senate with Amendments				
03/17/01	(H) 3rd Reading Concurred		99	1	
03/17/01	(H) Scheduled for 3rd Reading				
03/14/01	(C) Printed - New Version Available				
03/14/01	(H) 2nd Reading Concurred as Amended		98	1	
03/14/01	(H) 2nd Reading Motion to Amend Carried		96	2	
03/14/01	(H) Scheduled for 2nd Reading				
03/13/01	(H) Scheduled for 2nd Reading				
03/12/01	(H) Scheduled for 2nd Reading				
03/08/01	(H) Committee Report--Bill Concurred	(H) State Administration			
03/08/01	(H) Committee Executive Action--Bill Concurred	(H) State Administration	18	0	
03/02/01	(H) Hearing	(H) State Administration			
02/07/01	(S) Fiscal Note Printed				
02/06/01	(S) Fiscal Note Signed				
02/06/01	(H) Referred to Committee	(H) State Administration			
02/05/01	(S) Fiscal Note Received				
01/31/01	(H) First Reading				
01/30/01	(S) Transmitted to House				
01/30/01	(S) 3rd Reading Passed		48	0	
01/30/01	(S) Fiscal Note Requested				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
01/30/01	(S) Scheduled for 3rd Reading				
01/29/01	(S) 2nd Reading Passed on Voice Vote		48	0	
01/29/01	(S) Scheduled for 2nd Reading				
01/26/01	(S) Committee Report--Bill Passed as Amended	(S) State Administration			
01/26/01	(S) Committee Executive Action--Bill Passed as Amended	(S) State Administration	8	0	
01/25/01	(S) Hearing	(S) State Administration			
01/11/01	(S) Hearing Canceled	(S) State Administration			
01/03/01	(S) Referred to Committee	(S) State Administration			
01/03/01	(S) First Reading				
12/15/00	(C) Introduced Bill Text Available Electronically				
12/15/00	(S) Introduced				
12/11/00	(C) Pre-Introduction Letter Sent				
12/07/00	(C) Draft in Assembly/Executive Director Review				
12/07/00	(C) Draft in Final Drafter Review				
12/07/00	(C) Draft in Input/Proofing				
12/06/00	(C) Draft to Drafter - Edit Review [JLN]				
12/06/00	(C) Draft in Edit				
12/06/00	(C) Draft in Legal Review				
12/06/00	(C) Draft Back for Redo				
11/16/00	(C) Pre-Introduction Letter Sent				
10/18/00	(C) Draft in Assembly/Executive Director Review				
10/16/00	(C) Draft in Final Drafter Review				
10/10/00	(C) Bill Draft Text Available Electronically				
09/28/00	(C) Draft in Input/Proofing				
09/13/00	(C) Draft to Drafter - Edit Review [JLN]				
09/13/00	(C) Draft in Edit				
09/07/00	(C) Draft in Legal Review				
09/07/00	(C) Draft to Requester for Review				
05/22/00	(C) Fiscal Note Probable				
05/22/00	(C) Draft Request Received				

FISCAL NOTE

Bill #: SB0090 **Title:** Generally revise government purchasing laws

Primary Sponsor: Pete Ekegren **Status:** Second Reading

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. SB 90 generally revises government purchasing statutes, and any fiscal impact would be absorbed by the state agencies.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No local impact is anticipated.

SENATE BILL NO. 90

INTRODUCED BY P. EKEGREN

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts ~~--~~ ~~local government waiver~~. (1) Members of the legislature; state, county, city, town, or township officers; or any ~~deputy~~ deputies or ~~employee~~ employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded ~~to the lowest responsible bidder or proposer~~ based on competitive ~~bidding~~ procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

~~(c)~~(d) "former employee" does not include a person whose employment with the state was involuntarily terminated ~~due to~~ because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

~~(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:~~

~~(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;~~

~~(b) whether an opportunity was provided for open competitive bidding or negotiation;~~

~~(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and~~

~~(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.~~"

Section 2. Section 2-17-403, MCA, is amended to read:

"2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases ~~shall~~ must be submitted to the department of administration ~~twice yearly at the times~~ in the manner that ~~it~~ the department specifies. ~~Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.~~"

Section 3. Section 7-5-2309, MCA, is amended to read:

"7-5-2309. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is subject to competitive bid under this part, the state resident bid preference provided in 18-1-102(1)(a) applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county."

Section 4. Section 7-14-2404, MCA, is amended to read:

"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract."

Section 5. Section 7-14-2406, MCA, is amended to read:

"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges ~~shall~~ must meet ~~these~~ the following requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

(b) All bids must be sealed. Each bidder ~~shall~~ must meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ may not be completed until the board, while formally convened, affirmatively accepts all of the work ~~thereunder~~ under the contract."

Section 6. Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

Section 7. Section 17-8-244, MCA, is amended to read:

"17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute~~;~~ brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies ~~due to~~ because of natural disasters, disruptions in postal or delivery service, work stoppage ~~due to~~ because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) ~~contracts entered into before October 1, 1983;~~

~~(5)~~ wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(6)~~(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists."

Section 8. Section 18-1-101, MCA, is amended to read:

"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) ~~"Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c)~~ "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

~~(d)~~(c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

~~(e)~~(d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

~~(f)~~(e) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."

Section 9. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest bidder -- reciprocity. (1) ~~(a) Except as provided in subsection (1)(b), in~~ In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

~~(i)~~(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of ~~any~~ a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or

country.

~~(ii)~~(b) a public contract for the purchase of goods~~, if the goods are comparable in quality and performance~~, to the lowest responsible ~~resident~~ bidder ~~whose:~~

~~(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;~~

~~(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or~~

~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.~~

~~(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:~~

~~(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and~~

~~(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:~~

~~(A) the equal and fair treatment of bids originating in the United States and in the foreign country;~~

~~(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;~~

~~(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and~~

~~(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.~~

~~(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:~~

~~(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and~~

~~(B) not more than 5% higher than that of the nonresident bidder.~~

~~(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%~~ without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a

nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws."

Section 10. Section 18-1-103, MCA, is amended to read:

"18-1-103. Resident defined. (1) For the purpose of 18-1-102~~, 18-1-111,~~ and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or ~~an~~ association, the majority of all partners or ~~association~~ members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

~~(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section.~~"

Section 11. Section 18-1-111, MCA, is amended to read:

"18-1-111. Impartiality to be shown in letting contracts ~~-- preference to residents~~. The department may not show any partiality or favoritism not provided for by law in making awards or contracts ~~and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders~~."

Section 12. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- interest -- costs. (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. ~~For purposes of this section~~ If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a ~~judgment~~ decision by the government agency or court. If the contract does not specify when interest is payable before a ~~judgment~~ decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19."

Section 13. Section 18-2-306, MCA, is amended to read:

"18-2-306. Time of final acceptance and final payment on construction contracts -- interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district."

Section 14. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes ~~which~~ that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee,

institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) ~~It~~ Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. ~~It also~~ The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term ~~also~~ includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~The term~~ Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

Section 15. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body~~, as defined in 18-4-123,~~ under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised

from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 16. Section 18-4-133, MCA, is amended to read:

"18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

~~(3)~~(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with

a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract."

Section 17. Section 18-4-141, MCA, is amended to read:

"18-4-141. Contract transfers and collusion prohibited -- violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between ~~bidders~~ vendors for the purpose of securing any advantage to the ~~bidders~~ vendors as against the state in the awarding of contracts ~~is~~ are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a ~~bidder~~ vendor or ~~bidders~~ vendors by reason of collusive or secret agreement among the ~~bidders~~ vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

Section 18. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid ~~which~~ or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 19. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

~~(1)~~(2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

~~(2)~~(3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(3)~~(4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(4)~~(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

~~(5)~~(6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(6)~~(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(7)~~(8) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

~~(8)~~(9) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

~~(9)~~(10) "Responsive bidder" means a person who has submitted a bid ~~which~~ that conforms in all material respects to the invitation for bids.

~~(10)~~(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 20. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection -- authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) ~~At the time that~~ When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122."

Section 21. Section 18-4-306, MCA, is amended to read:

"18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the ~~required~~ supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

~~(2)~~(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

~~(3)~~(4) The record must be available for public inspection."

Section 22. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for the lease or purchase of hardware, software, or services for telecommunications ~~equipment and systems,~~ or data processing, ~~equipment,~~ the department of revenue liquor agencies, and the department of public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 23. Section 18-5-308, MCA, is amended to read:

"18-5-308. (Temporary) Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now or hereafter amended~~ under those statutes, except that in case of conflict, this part governs and the provisions set forth in 18-1-102~~, 18-1-111, and 18-1-112 shall~~ do not apply. (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)"

Section 24. Section 18-7-107, MCA, is amended to read:

"18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana ~~must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state~~ is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply."

Section 25. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding -- reciprocity. (1) Except as provided in subsections (2) through (5), ~~when~~ if the estimated cost of any work exceeds $50,000, the commission shall ~~let~~ award the contract by competitive bidding to the lowest responsible and responsive bidder. ~~Award~~ The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 ~~and 18-1-112~~.

(2) The commission may ~~let~~ award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located

in the foreign country; and

(b) the department has entered into a reciprocity agreement with the foreign country that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

(6) For the purposes of subsection (5), "construction" has the ~~same~~ meaning ~~as is~~ provided in 18-2-101."

NEW SECTION. **Section 26. Repealer.** Section 18-1-112, MCA, is repealed.

NEW SECTION. **Section 27. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 18] is effective July 1, 2005.

NEW SECTION. **Section 28. Applicability.** [This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001.

NEW SECTION. **Section 29. Termination.** [Sections 19 and 20] terminate June 30, 2005.

- END -

SENATE BILL NO. 90

INTRODUCED BY P. EKEGREN

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts ~~--~~ ~~local government waiver~~. (1) Members of the legislature; state, county, city, town, or township officers; or any ~~deputy~~ deputies or ~~employee~~ employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded ~~to the lowest responsible bidder or proposer~~ based on competitive ~~bidding~~ procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

~~(c)~~(d) "former employee" does not include a person whose employment with the state was involuntarily terminated ~~due to~~ because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

~~(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:~~

~~(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;~~

~~(b) whether an opportunity was provided for open competitive bidding or negotiation;~~

~~(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and~~

~~(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.~~"

Section 2. Section 2-17-403, MCA, is amended to read:

"2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases ~~shall~~ must be submitted to the department of administration ~~twice yearly at the times~~ in the manner that ~~it~~ the department specifies. ~~Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.~~"

Section 3. Section 7-5-2309, MCA, is amended to read:

"7-5-2309. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is subject to competitive bid under this part, the state resident bid preference provided in 18-1-102(1)(a) applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county."

Section 4. Section 7-14-2404, MCA, is amended to read:

"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract."

Section 5. Section 7-14-2406, MCA, is amended to read:

"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges ~~shall~~ must meet ~~these~~ the following requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

(b) All bids must be sealed. Each bidder ~~shall~~ must meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ may not be completed until the board, while formally convened, affirmatively accepts all of the work ~~thereunder~~ under the contract."

Section 6. Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

Section 7. Section 17-8-244, MCA, is amended to read:

"17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute~~;~~ brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies ~~due to~~ because of natural disasters, disruptions in postal or delivery service, work stoppage ~~due to~~ because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) ~~contracts entered into before October 1, 1983;~~

~~(5)~~ wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(6)~~(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists."

Section 8. Section 18-1-101, MCA, is amended to read:

"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) ~~"Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c)~~ "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

~~(d)~~(c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

~~(e)~~(d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

~~(f)~~(e) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."

Section 9. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest bidder -- reciprocity. (1) ~~(a) Except as provided in subsection (1)(b), in~~ In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

~~(i)~~(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of ~~any~~ a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or

country.

~~(ii)~~(b) a public contract for the purchase of goods~~, if the goods are comparable in quality and performance~~, to the lowest responsible ~~resident~~ bidder ~~whose:~~

~~(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;~~

~~(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or~~

~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.~~

~~(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:~~

~~(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and~~

~~(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:~~

~~(A) the equal and fair treatment of bids originating in the United States and in the foreign country;~~

~~(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;~~

~~(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and~~

~~(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.~~

~~(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:~~

~~(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and~~

~~(B) not more than 5% higher than that of the nonresident bidder.~~

~~(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%~~ without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a

nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws."

Section 10. Section 18-1-103, MCA, is amended to read:

"18-1-103. Resident defined. (1) For the purpose of 18-1-102~~, 18-1-111,~~ and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or ~~an~~ association, the majority of all partners or ~~association~~ members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

~~(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section.~~"

Section 11. Section 18-1-111, MCA, is amended to read:

"18-1-111. Impartiality to be shown in letting contracts ~~-- preference to residents~~. The department may not show any partiality or favoritism not provided for by law in making awards or contracts ~~and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders~~."

Section 12. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- interest -- costs. (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. ~~For purposes of this section~~ If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a ~~judgment~~ decision by the government agency or court. If the contract does not specify when interest is payable before a ~~judgment~~ decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19."

Section 13. Section 18-2-306, MCA, is amended to read:

"18-2-306. Time of final acceptance and final payment on construction contracts -- interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district."

Section 14. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes ~~which~~ that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee,

institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) ~~It~~ Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. ~~It also~~ The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term ~~also~~ includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~The term~~ Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

Section 15. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body~~, as defined in 18-4-123,~~ under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised

from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 16. Section 18-4-133, MCA, is amended to read:

"18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

~~(3)~~(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with

a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract."

Section 17. Section 18-4-141, MCA, is amended to read:

"18-4-141. Contract transfers and collusion prohibited -- violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between ~~bidders~~ vendors for the purpose of securing any advantage to the ~~bidders~~ vendors as against the state in the awarding of contracts ~~is~~ are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a ~~bidder~~ vendor or ~~bidders~~ vendors by reason of collusive or secret agreement among the ~~bidders~~ vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

Section 18. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid ~~which~~ or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 19. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

~~(1)~~(2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

~~(2)~~(3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(3)~~(4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(4)~~(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

~~(5)~~(6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(6)~~(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(7)~~(8) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

~~(8)~~(9) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

~~(9)~~(10) "Responsive bidder" means a person who has submitted a bid ~~which~~ that conforms in all material respects to the invitation for bids.

~~(10)~~(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 20. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection -- authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) ~~At the time that~~ When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122."

Section 21. Section 18-4-306, MCA, is amended to read:

"18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the ~~required~~ supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

~~(2)~~(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

~~(3)~~(4) The record must be available for public inspection."

Section 22. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for the lease or purchase of hardware, software, or services for telecommunications ~~equipment and systems,~~ or data processing, ~~equipment,~~ the department of revenue liquor agencies, and the department of public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 23. Section 18-5-308, MCA, is amended to read:

"18-5-308. (Temporary) Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now or hereafter amended~~ under those statutes, except that in case of conflict, this part governs and the provisions set forth in 18-1-102~~, 18-1-111, and 18-1-112 shall~~ do not apply. (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)"

Section 24. Section 18-7-107, MCA, is amended to read:

"18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana ~~must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state~~ is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply."

Section 25. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding -- reciprocity. (1) Except as provided in subsections (2) through (5), ~~when~~ if the estimated cost of any work exceeds $50,000, the commission shall ~~let~~ award the contract by competitive bidding to the lowest responsible and responsive bidder. ~~Award~~ The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 ~~and 18-1-112~~.

(2) The commission may ~~let~~ award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access

to bidding on highway projects and construction projects located in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY; and

(b) the department has entered into a reciprocity agreement with OR HAS EXCHANGED LETTERS OF UNDERSTANDING WITH the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, for projects located in either the United States or the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY.

(6) For the purposes of subsection (5), "construction" has the ~~same~~ meaning ~~as is~~ provided in 18-2-101."

NEW SECTION. **Section 26. Repealer.** Section 18-1-112, MCA, is repealed.

NEW SECTION. **Section 27. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 18] is effective July 1, 2005.

NEW SECTION. **Section 28. Applicability.** [This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001.

NEW SECTION. **Section 29. Termination.** [Sections 19 and 20] terminate June 30, 2005.

- END -

SENATE BILL NO. 90

INTRODUCED BY P. EKEGREN

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts ~~--~~ ~~local government waiver~~. (1) Members of the legislature; state, county, city, town, or township officers; or any ~~deputy~~ deputies or ~~employee~~ employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded ~~to the lowest responsible bidder or proposer~~ based on competitive ~~bidding~~ procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

~~(c)~~(d) "former employee" does not include a person whose employment with the state was involuntarily terminated ~~due to~~ because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

~~(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:~~

~~(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;~~

~~(b) whether an opportunity was provided for open competitive bidding or negotiation;~~

~~(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and~~

~~(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.~~"

Section 2. Section 2-17-403, MCA, is amended to read:

"2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases ~~shall~~ must be submitted to the department of administration ~~twice yearly at the times~~ in the manner that ~~it~~ the department specifies. ~~Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.~~"

Section 3. Section 7-5-2309, MCA, is amended to read:

"7-5-2309. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is subject to competitive bid under this part, the state resident bid preference provided in 18-1-102(1)(a) applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county."

Section 4. Section 7-14-2404, MCA, is amended to read:

"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract."

Section 5. Section 7-14-2406, MCA, is amended to read:

"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges ~~shall~~ must meet ~~these~~ the following requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

(b) All bids must be sealed. Each bidder ~~shall~~ must meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ may not be completed until the board, while formally convened, affirmatively accepts all of the work ~~thereunder~~ under the contract."

Section 6. Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

Section 7. Section 17-8-244, MCA, is amended to read:

"17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute~~;~~ brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies ~~due to~~ because of natural disasters, disruptions in postal or delivery service, work stoppage ~~due to~~ because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) ~~contracts entered into before October 1, 1983;~~

~~(5)~~ wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(6)~~(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists."

Section 8. Section 18-1-101, MCA, is amended to read:

"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) ~~"Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c)~~ "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

~~(d)~~(c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

~~(e)~~(d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

~~(f)~~(e) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."

Section 9. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest bidder -- reciprocity. (1) ~~(a) Except as provided in subsection (1)(b), in~~ In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

~~(i)~~(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of ~~any~~ a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or

country.

~~(ii)~~(b) a public contract for the purchase of goods~~, if the goods are comparable in quality and performance~~, to the lowest responsible ~~resident~~ bidder ~~whose:~~

~~(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;~~

~~(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or~~

~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.~~

~~(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:~~

~~(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and~~

~~(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:~~

~~(A) the equal and fair treatment of bids originating in the United States and in the foreign country;~~

~~(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;~~

~~(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and~~

~~(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.~~

~~(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:~~

~~(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and~~

~~(B) not more than 5% higher than that of the nonresident bidder.~~

~~(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%~~ without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a

nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws."

Section 10. Section 18-1-103, MCA, is amended to read:

"18-1-103. Resident defined. (1) For the purpose of 18-1-102~~, 18-1-111,~~ and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or ~~an~~ association, the majority of all partners or ~~association~~ members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

~~(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section.~~"

Section 11. Section 18-1-111, MCA, is amended to read:

"18-1-111. Impartiality to be shown in letting contracts ~~-- preference to residents~~. The department may not show any partiality or favoritism not provided for by law in making awards or contracts ~~and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders~~."

Section 12. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- interest -- costs. (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. ~~For purposes of this section~~ If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a ~~judgment~~ decision by the government agency or court. If the contract does not specify when interest is payable before a ~~judgment~~ decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19."

Section 13. Section 18-2-306, MCA, is amended to read:

"18-2-306. Time of final acceptance and final payment on construction contracts -- interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district."

Section 14. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes ~~which~~ that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee,

institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) ~~It~~ Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. ~~It also~~ The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term ~~also~~ includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~The term~~ Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

Section 15. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body~~, as defined in 18-4-123,~~ under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised

from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 16. Section 18-4-133, MCA, is amended to read:

"18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

~~(3)~~(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with

a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract."

Section 17. Section 18-4-141, MCA, is amended to read:

"18-4-141. Contract transfers and collusion prohibited -- violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between ~~bidders~~ vendors for the purpose of securing any advantage to the ~~bidders~~ vendors as against the state in the awarding of contracts ~~is~~ are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a ~~bidder~~ vendor or ~~bidders~~ vendors by reason of collusive or secret agreement among the ~~bidders~~ vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

Section 18. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid ~~which~~ or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 19. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

~~(1)~~(2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

~~(2)~~(3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(3)~~(4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(4)~~(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

~~(5)~~(6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(6)~~(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(7)~~(8) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

~~(8)~~(9) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

~~(9)~~(10) "Responsive bidder" means a person who has submitted a bid ~~which~~ that conforms in all material respects to the invitation for bids.

~~(10)~~(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 20. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection -- authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) ~~At the time that~~ When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122."

Section 21. Section 18-4-306, MCA, is amended to read:

"18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the ~~required~~ supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

~~(2)~~(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

~~(3)~~(4) The record must be available for public inspection."

Section 22. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for the lease or purchase of hardware, software, or services for telecommunications ~~equipment and systems,~~ or data processing, ~~equipment,~~ the department of revenue liquor agencies, and the department of public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 23. Section 18-5-308, MCA, is amended to read:

"18-5-308. (Temporary) Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now or hereafter amended~~ under those statutes, except that in case of conflict, this part governs and the provisions set forth in 18-1-102~~, 18-1-111, and 18-1-112 shall~~ do not apply. (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)"

Section 24. Section 18-7-107, MCA, is amended to read:

"18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana ~~must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state~~ is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply."

Section 25. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding -- reciprocity. (1) Except as provided in subsections (2) through (5), ~~when~~ if the estimated cost of any work exceeds $50,000, the commission shall ~~let~~ award the contract by competitive bidding to the lowest responsible and responsive bidder. ~~Award~~ The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 ~~and 18-1-112~~.

(2) The commission may ~~let~~ award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access

to bidding on highway projects and construction projects located in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY; and

(b) the department has entered into a reciprocity agreement with OR HAS EXCHANGED LETTERS OF ~~UNDERSTANDING~~ INFORMATION WITH the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY, for projects located in either the United States or the foreign country, OR PROVINCE OR OTHER POLITICAL SUBDIVISION OF THAT COUNTRY.

(6) For the purposes of subsection (5), "construction" has the ~~same~~ meaning ~~as is~~ provided in 18-2-101."

NEW SECTION. **Section 26. Repealer.** Section 18-1-112, MCA, is repealed.

NEW SECTION. **Section 27. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 18] is effective July 1, 2005.

NEW SECTION. **Section 28. Applicability.** [This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001.

NEW SECTION. **Section 29. Termination.** [Sections 19 and 20] terminate June 30, 2005.

- END -

AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-2-201, MCA, is amended to read:

"2-2-201. Public officers, employees, and former employees not to have interest in contracts ~~--~~ ~~local government waiver~~. (1) Members of the legislature; state, county, city, town, or township officers; or any ~~deputy~~ deputies or ~~employee~~ employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded ~~to the lowest responsible bidder or proposer~~ based on competitive ~~bidding~~ procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

~~(c)~~(d) "former employee" does not include a person whose employment with the state was involuntarily terminated ~~due to~~ because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

~~(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:~~

~~(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;~~

~~(b) whether an opportunity was provided for open competitive bidding or negotiation;~~

~~(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and~~

~~(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.~~"

Section 2. Section 2-17-403, MCA, is amended to read:

"2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases ~~shall~~ must be submitted to the department of administration ~~twice yearly at the times~~ in the manner that ~~it~~ the department specifies. ~~Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.~~"

Section 3. Section 7-5-2309, MCA, is amended to read:

"7-5-2309. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of $50,000 and that is subject to competitive bid under this part, the state resident bid preference provided in 18-1-102(1)(a) applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county."

Section 4. Section 7-14-2404, MCA, is amended to read:

"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract."

Section 5. Section 7-14-2406, MCA, is amended to read:

"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges ~~shall~~ must meet ~~these~~ the following requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

(b) All bids must be sealed. Each bidder ~~shall~~ must meet the requirements of Title 18, chapter 1, part

2.

(2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract ~~shall~~ may not be completed until the board, while formally convened, affirmatively accepts all of the work ~~thereunder~~ under the contract."

Section 6. Section 7-14-2716, MCA, is amended to read:

"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall ~~do so~~ award the contract in accordance with the requirements of 18-1-102~~, 18-1-112,~~ and Title 18, chapter 2, part 4. ~~When~~ If there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee."

Section 7. Section 17-8-244, MCA, is amended to read:

"17-8-244. Exemptions. Section 17-8-242 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute~~;~~ brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404.

(3) delinquencies ~~due to~~ because of natural disasters, disruptions in postal or delivery service, work stoppage ~~due to~~ because of labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) ~~contracts entered into before October 1, 1983;~~

~~(5)~~ wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

~~(6)~~(5) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under

the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists."

Section 8. Section 18-1-101, MCA, is amended to read:

"18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, "department" means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.

(b) ~~"Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c)~~ "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

~~(d)~~(c) (i) "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

~~(e)~~(d) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.

~~(f)~~(e) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."

Section 9. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest bidder -- reciprocity. (1) ~~(a) Except as provided in subsection (1)(b), in~~ In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

~~(i)~~(a) a public contract for construction, repair, or public works to the lowest responsible bidder without

regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of ~~any~~ a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

~~(ii)~~(b) a public contract for the purchase of goods~~, if the goods are comparable in quality and performance~~, to the lowest responsible ~~resident~~ bidder ~~whose:~~

~~(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;~~

~~(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or~~

~~(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.~~

~~(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:~~

~~(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and~~

~~(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:~~

~~(A) the equal and fair treatment of bids originating in the United States and in the foreign country;~~

~~(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;~~

~~(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and~~

~~(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.~~

~~(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:~~

~~(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made;~~

~~and~~

~~(B) not more than 5% higher than that of the nonresident bidder.~~

~~(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%~~ without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws."

Section 10. Section 18-1-103, MCA, is amended to read:

"18-1-103. Resident defined. (1) For the purpose of 18-1-102~~, 18-1-111,~~ and this section, the word "resident" includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or ~~an~~ association, the majority of all partners or ~~association~~ members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

~~(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section.~~"

Section 11. Section 18-1-111, MCA, is amended to read:

"18-1-111. Impartiality to be shown in letting contracts ~~-- preference to residents~~. The department may not show any partiality or favoritism not provided for by law in making awards or contracts ~~and shall be~~

~~absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders~~."

Section 12. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- interest -- costs. (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. ~~For purposes of this section~~ If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a ~~judgment~~ decision by the government agency or court. If the contract does not specify when interest is payable before a ~~judgment~~ decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19."

Section 13. Section 18-2-306, MCA, is amended to read:

"18-2-306. Time of final acceptance and final payment on construction contracts -- interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district."

Section 14. Section 18-4-123, MCA, is amended to read:

"18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes ~~which~~ that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) ~~It~~ Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. ~~It also~~ The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term ~~also~~ includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~The term~~ Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."

Section 15. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body~~, as defined in 18-4-123,~~ under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to

procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 16. Section 18-4-133, MCA, is amended to read:

"18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

~~(3)~~(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract."

Section 17. Section 18-4-141, MCA, is amended to read:

"18-4-141. Contract transfers and collusion prohibited -- violations and penalty. (1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between ~~bidders~~ vendors for the purpose of securing any advantage to the ~~bidders~~ vendors as against the state in the awarding of contracts ~~is~~ are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a ~~bidder~~ vendor or ~~bidders~~ vendors by reason of collusive or secret agreement among the ~~bidders~~ vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

Section 18. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

(2) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(3) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(4) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

(5) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

(6) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(7) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

(8) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

(9) "Responsive bidder or offeror" means a person who has submitted a bid ~~which~~ or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 19. Section 18-4-301, MCA, is amended to read:

"18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

~~(1)~~(2) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs ~~which~~ that are allowable and allocable in accordance with the contract terms and the provisions of this chapter~~,~~ and a fee, if any.

~~(2)~~(3) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) ~~The term~~ Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

~~(3)~~(4) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~(4)~~(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting bids.

~~(5)~~(6) "Office supply" means an item included under the office supply commodity class codes maintained by the department.

~~(6)~~(7) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

~~(7)~~(8) "Request for proposals" means all documents, whether attached or incorporated by reference, ~~utilized~~ used for soliciting proposals.

~~(8)~~(9) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability ~~which~~ that will ~~assure~~ ensure good faith performance.

~~(9)~~(10) "Responsive bidder" means a person who has submitted a bid ~~which~~ that conforms in all material respects to the invitation for bids.

~~(10)~~(11) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 20. Section 18-4-302, MCA, is amended to read:

"18-4-302. Methods of source selection -- authorization for alternative procurement methods. (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) ~~At the time that~~ When the department or another agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department's central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

(i) evaluate the request;

(ii) approve or deny the request; and

(iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

(i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122."

Section 21. Section 18-4-306, MCA, is amended to read:

"18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the ~~required~~ supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

~~(2)~~(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

~~(3)~~(4) The record must be available for public inspection."

Section 22. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. However, the department may contract for the lease or purchase of hardware, software, or services for telecommunications ~~equipment and systems,~~ or data processing, ~~equipment,~~ the department of revenue liquor

agencies, and the department of public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 23. Section 18-5-308, MCA, is amended to read:

"18-5-308. (Temporary) Construction with other sections. Procurement from small businesses under this part is subject to all other statutes governing state procurement and all rules promulgated ~~thereunder, as now or hereafter amended~~ under those statutes, except that in case of conflict, this part governs and the provisions set forth in 18-1-102~~, 18-1-111, and 18-1-112 shall~~ do not apply. (Repealed effective June 30, 2003--secs. 4(2), 5(2), Ch. 271, L. 1999.)"

Section 24. Section 18-7-107, MCA, is amended to read:

"18-7-107. State printing, binding, and stationery work. All printing, binding, and stationery work for the state of Montana ~~must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state~~ is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply."

Section 25. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding -- reciprocity. (1) Except as provided in subsections (2) through (5), ~~when~~ if the estimated cost of any work exceeds $50,000, the commission shall ~~let~~ award the contract by

competitive bidding to the lowest responsible and responsive bidder. ~~Award~~ The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 ~~and 18-1-112~~.

(2) The commission may ~~let~~ award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of

that country.

(6) For the purposes of subsection (5), "construction" has the ~~same~~ meaning ~~as is~~ provided in 18-2-101."

Section 26. Repealer. Section 18-1-112, MCA, is repealed.

Section 27. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2001.

(2) [Section 18] is effective July 1, 2005.

Section 28. Applicability. [This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001.

Section 29. Termination. [Sections 19 and 20] terminate June 30, 2005.

- END -

I hereby certify that the within bill,
SB 0090, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 90

INTRODUCED BY P. EKEGREN

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS' AFFAIRS INTERIM COMMITTEE

AN ACT GENERALLY REVISING GOVERNMENT CONTRACTING LAWS; EXPANDING THE GENERAL APPLICATION OF THE PROCUREMENT LAWS; CLARIFYING EMPLOYEE AND FORMER EMPLOYEE CONTRACT INVOLVEMENT RESTRICTIONS; PROVIDING THAT MOTOR VEHICLE PURCHASE REQUISITIONS MAY BE SUBMITTED IN THE MANNER SPECIFIED BY THE DEPARTMENT OF ADMINISTRATION; ABOLISHING THE REQUIREMENT THAT POLITICAL SUBDIVISIONS APPLY A RESIDENT BIDDER PREFERENCE FOR THE PROCUREMENT OF GOODS; CLARIFYING THE INTEREST RATE ON OVERDUE PAYMENTS; MAKING THE RESIDENT BIDDER PREFERENCE FOR STATE GOVERNMENT PROCUREMENT OF GOODS RECIPROCAL; ABOLISHING THE MONTANA-MADE GOODS PREFERENCE; EXEMPTING CERTAIN PURCHASES FROM THE GENERAL REQUIREMENTS OF THE LAW; ALLOWING ALTERNATIVE PURCHASING METHODS; REVISING SOLE SOURCE PURCHASE CRITERIA; CLARIFYING THE DURATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 2-2-201, 2-17-403, 7-5-2309, 7-14-2404, 7-14-2406, 7-14-2716, 17-8-244, 18-1-101, 18-1-102, 18-1-103, 18-1-111, 18-1-404, 18-2-306, 18-4-123, 18-4-132, 18-4-133, 18-4-141, 18-4-301, 18-4-302, 18-4-306, 18-4-313, 18-5-308, 18-7-107, AND 60-2-112, MCA; REPEALING SECTION 18-1-112, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

LiteSys inc. Intelicom inc.

"Safety Begins with Good Communication"™

EXHIBIT 3
DATE 3-2-01
HB SB 090

Negative Effects of Bid Preferences on a Montana Business

In 1999, Intelicom Inc., a Belgrade, Montana company, lost the opportunity of over $150,000 worth of business from the State of New York as a direct result of retaliatory legislation against Montana businesses. This lost opportunity translates into 1-1/2 jobs the people of Montana did not receive that year as the price of retaining in-state bidding preference legislation. New York is an extreme case, but the potential volume of business is significant for a small Montana company where every contract counts. In fact, our company barely broke even that year after spending 2 years trying to get New York's business.

Most states we do business with add reciprocal penalties to our bids that put us at a bidding disadvantage. Facing thirty-four (34) other states that penalize us from doing business with their state governments is not a business-friendly policy for the State of Montana. It is a discouragement for businesses to stay here, especially if a company is completely barred from doing business with the State of New York, which is one of the largest markets in the country.

Nearly all the states in our geographical region have reciprocation against Montana companies. Eliminating bidding preferences would compel them to drop the penalties against us and level the playing field to make us more competitive to bring in business from those states. The proposed bill includes reciprocation we would have against states such as Wyoming that still have in-state preferences. This would give Montana businesses a bidding advantage over Wyoming companies for State of Montana bids.

The State of Montana is faced with the growing dilemma of finding more ways to be competitive in a national and worldwide economy. The best chance we have to grow our state economy is to pull money from other much wealthier states. It is important to be concerned with how money is being exchanged within the state, but we need to look at the bigger picture to determine how new money can be brought in from outside the state.

State bidding preference legislation was originally well intentioned. Unfortunately, reciprocation from other states has not only neutralized the benefit, but has erected an additional barrier for Montana businesses.

Revising this law will help our state's economy and encourage job growth funded by out-of-state customers at no cost to the state.

Respectfully,

Trygve F. Dahle III, President
Intelicom Incorporated

P.O. Box 239 • Belgrade, MT 59714-0239 www.litesys.com Phone: (406) 388-9317 • Fax: (406) 388-9319

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

JOSEPH H. BOARDMAN
COMMISSIONER

GEORGE E. PATAKI
GOVERNOR

April 7, 1999

Mr Lonnie Bos
Intelicom, Incorporated
P O. Box 239
Belgrade, MT 59714-0239

Dear Mr Bos,

Thank you for your recent bid on Portable Truck-Mounted Variable Message Signs Unfortunately, I must inform you that I have recently become aware of a circumstance which will prohibit the State of New York from awarding a contract to Intelicom.

Specifically, a New York State Statute known as the Omnibus Procurement Act of 1992 (amended 1994), provides that if a bidder's principal place of business is located in a state that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 amendments (Chapter 684, Laws of 1994) *requires that they be denied contracts that they would otherwise obtain.*

According to information on file with the New York State Department of Economic Development, the State of Montana maintains a preference to in-state suppliers in its procurement programs. This in-state preference serves to deny award of Montana contracts to certain out-of-state (including New York State) businesses attempting to do business in your state. Since Intelicom's principal place of business is located in Montana, I have no choice but to deny award of this contract

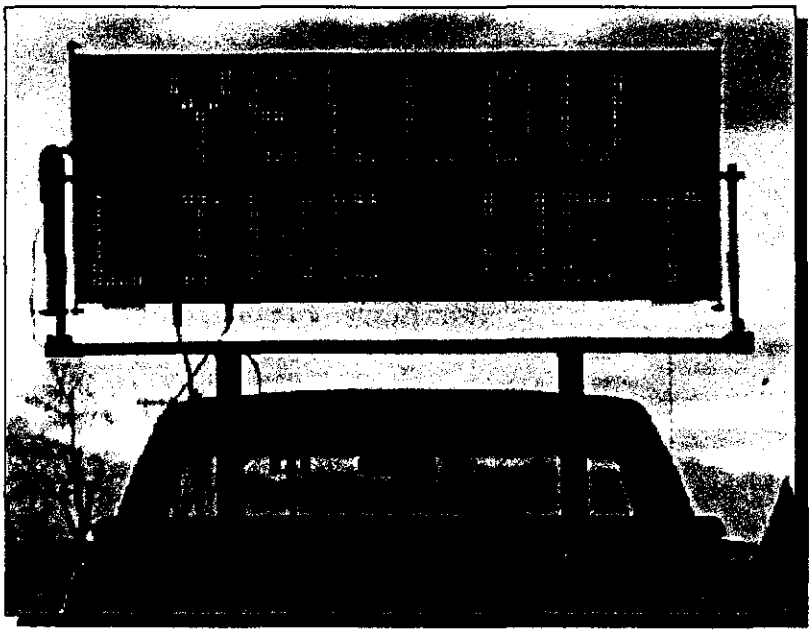
I regret that this action became necessary, but please understand that I must abide by New York State Statute. I might suggest that you contact your State Senator or Assemblyman in hopes of persuading the State of Montana to change its procurement practices so as to remove in-state preference laws. If you wish further information regarding this statute, contact Ms. Katherine Loucks, Division for Small Business, Empire State Development, One Commerce Plaza, Albany, New York 12245 Ms. Loucks can be reached by telephone at (518) 473-0499

Regretfully,

CHRISTOPHER J. MAGIN
Purchasing Agent, NYSDOT

LiteReader®Vehicle Mounted Message Signs

"Safety Begins With Good Communication"™



LiteReader® Model 1020A VCMS

Message Examples

PAINT STRIPING

What to look out for.	"YELLOW LINE WET"
What you are about.	"PAINT STRIPER AHEAD"
What to avoid.	"STAY OFF WHITE LINE"
What not to do.	"DO NOT PASS"

INCIDENT RESPONSE

Information.	"ACCIDENT AHEAD"
Status report.	"FLOODING ROAD CLOSED"
Warning.	"DEBRIS ON ROAD"
Give direction.	"MERGE LEFT"

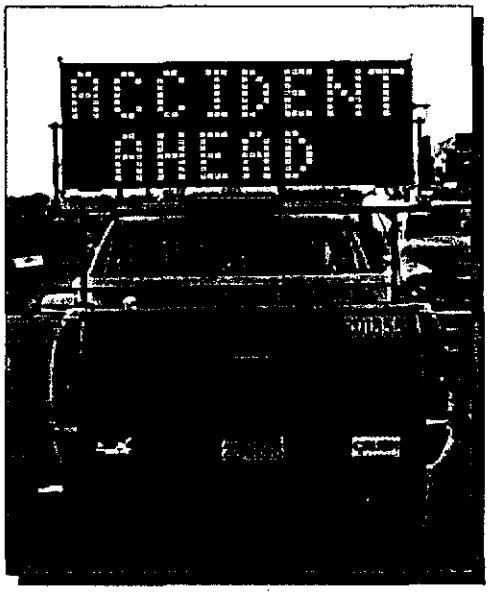
STREET & HIGHWAY MAINTENANCE

Someone is out there.	"WORKERS ON ROAD"
Watch out for...	"FRESH TAR"
Kind of work.	"BRIDGE WORK"
Slow moving equipment.	"SWEEPER AHEAD"

Safety and Traffic Information

LiteSys® Inc. was the first company in North America to design, manufacture and sell LED signs specifically for vehicle mounted applications. The LiteReader® Vehicle Changeable Message Signs (VCMS) were designed specifically to withstand vibration, pounding and severe environmental conditions encountered in roadway environments.

We have introduced several innovations which have been quickly and widely adopted as valuable in the industry. Among them is the legibility enhancing Pixel Focal Configuration™ (PFC). Another widely accepted innovation that LiteSys® Inc. introduced to the industry was the handheld terminal for simple message programming and message selection.



Manage traffic congestion.

LiteSys™ inc. Intelicom inc.

PO BOX 239, Belgrade, MT, 59714
Ph. 406-388-9317 info@LiteSys.com

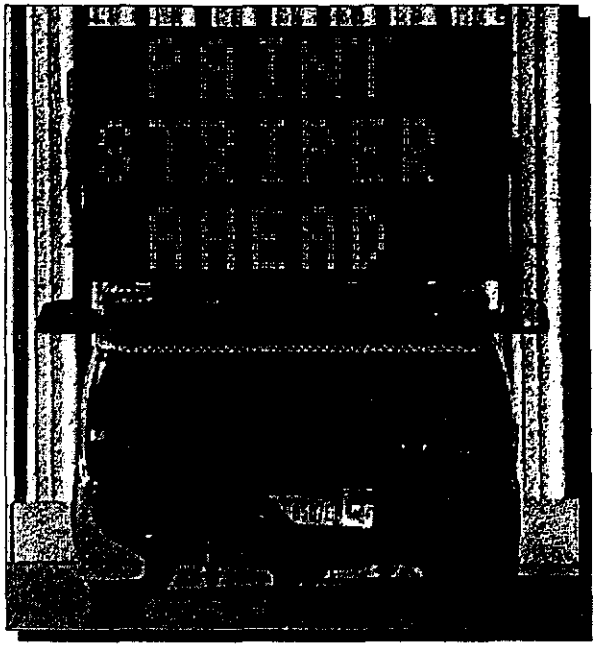
LiteReader®Vehicle Mounted Message Signs

"Safety Begins With Good Communication"™

Simple-- When operating and installing a VCMS, simplicity needs to be top priority according to an Incident Response Supervisor in the mid-west. He likes the easy one keystroke message selection capability and plug and play installation. He intends on tripling the number of LiteReader® VCMS units next time he buys, and wants no cheap imitations.

Effective-The effectiveness of the LiteReader® VCMS has been proven in the field for many years now. One DOT operation has reduced their paint claims by about 88% in the first year of operation.

Reliable-LiteReader® VCMS have a long track record of producing reliable products. A Roads Maintenance Supervisor continues to specify and buy LiteReader® VCMS because, "I always get good equipment from your company."



LiteReader® Model 1030A VCMS

LiteReader® Vehicle Changeable Message Signs

Model Number	Character Height	Number of Lines	Number of Characters/Line
1027	10"	2	7
1020A	10"	2	8
1030A	10"	3	8
1227A	12"	2	7
1220A	12"	2	8
1230A	12"	3	8

LiteSys™ inc. Intellicom inc.

PO BOX 239, Belgrade, MT 59714-0239

Ph 406-388-9317 FAX 406-388-9319 Email: info@LiteSys.com

Information subject to change without notice. © 2000 LiteSys® Inc.

THE HUNTING SHACK, INC.

4406 Rathbun Ln. Stevensville, MT. 59870-6139
Phone: (406) 777-2106 Fax: (406) 777-3908
Email: mail@thehuntingshack.com Web Page http://www.thehuntingshack.com

EXHIBIT 4
DATE 3-2-01
HB SB 90

In Support Of

Senate Bill 90

Presented by William E. Campbell, President

The Hunting Shack, Inc.

Stevensville, Montana

In hearing, before the House, State Administration Committee. March 2, 2001

I. Introduction

A. William Campbell

1. President and Majority Owner - The Hunting Shack, Inc.
2. Member of the "National Federation of Independent Businesses" who also support this legislation.
3. In business 33 years
4. 20 plus employee's, and increasing.
5. Recent Capital Improvement of over a million dollars.
6. Law Enforcement ammunition Distributor for:
   a. HS Munitions, Inc.
   b. Winchester - For the Central and Western region's of the U.S.
   c. CCI/ Speer - For the Rocky Mtn. region.
   d. Distributor, or dealer of many other shooting supplies such as:
   e. Sole Distributor of CCI/Speer loading components in the US to the manufacturing community.
   f. Sierra Bullets.
   g. Hornady Bullets.

II. Our Position

A. **We are in support of SB-90.**

1. The amount of our business within Montana is small due to limited population and small law enforcement agencies. (Less than 1% of our total business)
2. Our experience is that most small businesses within Montana that sell to government agencies, must bid out of state to survive.
3. We have engaged in bidding for contracts in other states for 25 years.
   a. These out of state contracts would include, but are not limited to the states of Colorado, Washington, Oregon, Utah, Texas, and Idaho.
4. Some states invoke reciprocity. This means that when someone from a state that gives in state preferential places a bid, that company is penalized by the percentage that their state gives them a preference. That amount is added to the bid cost in figuring the winner of the bid. Some states are even barred from doing business with vendor's from a state with preference laws.
5. Due to reciprocity laws against in state preference, we have lost millions of dollars worth of out of state contracts.
   a. As an example, the 1999 Oregon State contract was for a five year period, grossed four million dollars, and lost us a potential profit of two hundred thousand dollars.
6. Even in states where we are the sole factory distributor, and have bid less than other bidders, we have lost bids due to reciprocity laws.
7. Businesses who bid for government contracts would be reluctant to re-locate to Montana under the current law that includes "In State Preference".
8. Businesses in Montana often must move to other states where they do not suffer from reverse discrimination.

III. Conclusion: **We support the passage of SB-90 as drafted.**

A. We will not lose an appreciable amount of business within Montana.

B. We will gain a significant amount of government business from outside Montana.

C. It will help level the playing field for those of us doing business with other states.

Respectfully Submitted,

William E. Campbell

EXHIBIT 5
DATE 3-2-01
HB SB090

SUMMARY OF ISSUES
SB 90
REVISING GOVERNMENT CONTRACTING LAWS

1. **Procurement Preferences.** Replaces Montana resident and Montana-made preference with a "reciprocal preference" for supplies (already used for construction and public works) to help Montana businesses get business with 34 other state governments. Reciprocal preference for supplies will not apply to local governments.

2. **Revisions to the Montana Procurement Act.**

   a. Clarifies that the Act applies: 1) to procurements that involve no cost to the State, but will generate income for a vendor; and 2) to the procurement of supplies and services unless a statute specifically exempts an agency from the Act.

   b. Options for Unsuccessful Solicitations. Directs the Department of Administration on what to do in the event of an unsuccessful solicitation – either cancel and start over by enlisting more vendors to respond or if it is determined that no more vendors will respond to a second solicitation, the department may then directly negotiate with a vendor in order to receive the supply or service.

   c. Pilot Alternative Procurement Methods. Permits the Department of Administration to authorize pilot alternative procurement methods such as on-line reverse auctions, solution-based contracts, "share-in-savings" projects or partnering with a non-profit organization or the private sector. This option ends in 2005.

   d. Sole Source. Includes the ability to make a sole source purchase "when there is only one acceptable or suitable source for a supply or service."

3. **Clean Up:** 1) Provides definition of "directly involved" concerning when former public officials can obtain contracts; 2) removes requirement for Governor's approval of vehicle purchases outside of the normal bi-annual bid; 3) clarifies which interest rate applies when a state payment is late for various reasons; 4) includes "offerors" as well as bidders in prohibition on collusion; 5) includes "offerors" and "proposals" in definition of "responsive bidder," and; 6) clarifies language concerning information technology purchases.

EXHIBIT 6
DATE 3-2-01
HB SB090

THE PARTY OF THE FIRST PART:
A REVIEW OF MONTANA'S STATE CONTRACTING LAWS AND PROCEDURES

Prepared on Behalf of the
State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee

by
David D. Bohyer, Director
Office of Research and Policy Analysis, Legislative Services Division

December 2000

Published by
Montana Legislative Services Division
P.O. Box 201766
State Capitol, Room 110
Helena, MT 59620-1706
Phone: (406) 444-3064
FAX: (406) 444-33036
http://www.leg.state.mt.us

TABLE OF CONTENTS

Introduction to State Procurement and Contracting 5
The Nature and Scope of Senate Joint Resolution No. 9 6
Review of the 1999-2000 Interim: Committee Activities 8
Committee's Approach 9

Chapter 1: Montana Law Governing Contracting, Procurement, and Contract Enforcement 13
Montana Statute 13
Administrative Rules 15
Case Law 16
Summary 19

Chapter 2: Current State Agency Contracting, Procurement, and Enforcement Procedures 21
Administrative Procedures of Procurement and Contracting 21
Capacity to Administer, Monitor, and Enforce 23
Contract Enforcement 26
Summary 27

Chapter 3: Providing Consistency and Enhancing Protection of the State's Interest in Contract Negotiation and Enforcement 29
Consistency in Processes 29
Central Procurement and Contract Staff 30
Summary 33

Chapter 4: Review and Technical Support Provided During the Development of a Contract 35
Levels of Support 35
Summary 36

Chapter 5: Montana Experiences with Contracting for Services 37
Recent Experience 37
Mental Health Care 37
Legacy Management Systems 41

Chapter 6: Contracting and Procurement in Other States 45
Overview 45
Massachusetts 45
Procurement Reform in Massachusetts 46
Regulations and Handbook 47
Procurement Management Teams 48
Requests for Responses 48
Contracts 48
Internet (Comm-PASS and all Procurement Information) 49

New Organizational Units 49
OSD Administrative Savings, Retained Revenue, Cost Containment and Funds Recovery 50
Continuous Quality Improvement and Customer Satisfaction: 51
Best Value Procurement 51
Procurement Management Teams 55
Quality Assurance 56
Summary for Massachusetts 57
Oregon 58
Procurement And Contracting in Oregon 59
Introduction 59
Competition 59
Preferences in Purchasing 60
Model Rules 60
Vendor and Purchaser Notification 61
Consortium Buying 62
Summary of Other States 64

Chapter 7: Summary and Conclusion 67
Findings 67
Options for Legislative Consideration 68
Senate Bill No. 90 69
House Bill No. 48 69
Options for the Executive Branch 70
Inventory Technical and Legal Support 71
Availability and Use of Technical and Legal Support 71
Contract Enforcement 71
Business Processes for Contracting 72
Training and Education 72
Options for the SAIC 72
Continue the Study of Procurement and Contracting 73
Audit State Contracting Procedures 73
Vendor Outreach 73

Appendix A. Senate Joint Resolution No. 9

Appendix B. Interested Persons List

Appendix C. Proposed Legislation

Appendix D. Glossary

Appendix E. Selected References

Introduction to State Procurement and Contracting

The subject of public/private contracting has received considerable and increased attention, both in academia and the media. Buzz words such as "privatization" and "outsourcing" have become part of the public sector lexicon, particularly since the Reagan Administration. Increasingly, news reports and press releases detail the latest efforts to provide government services through private sector vendors. Predictions are that the trend of public contracts with private vendors will continue and that public/private contracts will most likely increase is breadth, depth, monetary value, and public visibility.

As with many things, Montana is typically a microcosm of national trends and events. That can certainly be said with public procurement and contracts. The relatively recent yet consistent trend toward outsourcing many historically in-house or directly-provided public services is evident in regard to state procurement, particularly procurements involving services.[1] What not long ago were common in-house, directly provided services -- mental health care, prisons, software engineering, janitorial, grounds maintenance -- are now largely outsourced through numerous and varied public/private contracts. Some of the contracts have been high value, highly visible, or moderately contentious or a combination.

In 1999, Senate Joint Resolution No. 9 (SJR 9) was introduced and adopted partially because of the scope, nature, and visibility of several recent state/private contracts. Although willing to participate in extended

---

[1] In 1998, the Office of the Legislative Auditor estimated that the state contracted for about $380 million worth of supplies and services annually. See *Contract Monitoring: A Limited Scope Review* (98SP-45), Office of the Legislative Auditor, State Capitol, Helena, MT, 1998, p.1.

public/private contracts, even to the point of being an advocate for increased outsourcing in some cases, the Montana Legislature in January 1999 was confronted with several instances where the public/private relationships were stretched thin, some even failing. Accompanying the practical difficulties of providing the services at all was the added complexity of constructing, managing, and enforcing the terms of agreements. Further, the media was poised for continued scrutiny of service delivery under the contracts and interested clients, citizens, and many legislators were tense, doubtful, even dismayed.

It was under those conditions that SJR 9 passed the Senate 48-0 and the House of Representatives 86-12. On May 17, 1999, the Legislative Council assigned the SJR 9 study to the State Administration, Public Employee Retirement, and Veterans' Issues Interim Committee (SAIC or Committee).

The Nature and Scope of Senate Joint Resolution No. 9

The circumstances surrounding and resulting from the contracts alluded to previously had led the 56th Legislature to adopt SJR 9. (The full text of SJR 9 may be found in Appendix A.) The preamble language contained in SJR 9 describes in greater detail the Legislature's initial concerns:

> WHEREAS, a national trend toward privatization of government services has led many states to closely examine and refine their contracting laws and procedures; and
>
> WHEREAS, the State of Montana is relying to an ever-greater degree on numerous types of services provided through contracts with private sector vendors; and

WHEREAS, the Department of Administration and other entities have indicated that there is a large body of new information deriving from other states' contract development and administration experiences that may be of great value to the Legislature and the State of Montana; and

WHEREAS, Montana's large-scale contracts with private sector vendors include a diverse range of services, such as prisons, managed care, and information technology; and

WHEREAS, the success or failure of government programs provided by private sector vendors hinges on the ability of the state to effectively develop, negotiate, and enforce contracts with the private sector; and

WHEREAS, risks to state resources are inherent in the contracting process; and

WHEREAS, both the Joint Oversight Committee on State Management Systems and the Legislative Finance Committee have expressed concerns about an absence of adequate protection of the state's interests throughout the contracting process; and

WHEREAS, it is a responsibility of the Legislature to examine whether adequate, consistent policies and procedures are in place to ensure that appropriate contracting practices are in use. (Senate Joint Resolution No. 9, L. 1999.)

As outlined in SJR 9, the goals of the study of state contracting were to include:

(2)...(a) a thorough review of current law governing contracting, procurement, and contract enforcement;

(b) a thorough review of current state agency contracting, procurement, and enforcement procedures;

(c) an examination of how other states have addressed increases in the scale and scope of contracts with private sector vendors, including other states' experiences with centralizing state procurement, contracting, and contract enforcement responsibilities in special review boards, commissions, and councils;

(d) a review of recent Montana experiences with contracting for services and contract enforcement, paying particular attention to large-scale contracts and the lessons learned from the experiences;

(e) an examination of the possibilities for providing agencywide consistency in the contracting process and enhancing protection of the state's interests in contract negotiation and enforcement; and

(f) an examination of the current level of review and technical support provided during the development of a contract. (Senate Joint Resolution No. 9, L. 1999.)

Chapters 1 through 7 of this report respond to the items commissioned in the study. Prior to addressing those items, however, it will be useful to have some additional background.

Review of the 1999-2000 Interim: Committee Activities

The SAIC met eight separate times to discuss the SJR 9 study of state contracting -- in June, September, and November 1999 and in January, February, March, May and June 2000. In general terms, each meeting included some level of review of prior meetings' discussions, actions, directions, and so on, as well as opportunities for interested persons, including state agency staffers and the public, to address the Committee. Additionally, the SAIC members regularly discussed the issues on the

agenda, including question and answer sessions between the members and between the SAIC members, staff, and audience participants.

Committee's Approach

The study approach taken by the SAIC closely followed the outline suggested in SJR 9 and was characterized thus is the staff-prepared, committee-adopted study plan:

> Study Approach: The study can be conducted through a series of staff reports and analyses, combined with subsequent committee discussion of policy issues and options. Staff reports and analysis should include: (1) current law; (2) agencies' processes, including review and technical support; (3) other states' experiences and processes; and (4) identifying policy options. Committee involvement should include: (1) exploring Montana's experiences with large-scale contracts for services; and (2) discussing policy options, including recommendations for policy change. Front-load with staff research and reporting; back-load with committee discussion/action. Staff reports to committee by May 2000; committee "hearings" in May/June 2000; committee discussion/action in August/September 2000.[2]

- Objective: Review current law governing contracting, procurement, and contract enforcement, including state agency contracting, procurement, and enforcement procedures.

---

2 *Preliminary Evaluation of SJR 9: State Contracting* by Dave Bohyer, Research Director, Montana Legislative Services Division, September 1999.

Action: Supplemental to the general outline of Committee activities described previously, Chapters 1 and 2 provide a discussion of Montana law and administrative procedures. The draft legislation in Senate Bill No. 90 (see Appendix C) contains the Committee's recommendations for "housekeeping" and policy changes.

- Objective: Examine how other states have addressed increases in the scale and scope of contracts with private sector vendors, including other states' experiences with centralizing state procurement, contracting, and contract enforcement responsibilities in special review boards, commissions, and councils.

  Action: The Committee reviewed numerous articles and excerpts addressing other states' procurement processes generally or, in some cases, with respect to individual states. The SAIC members also participated in a seminar on procurement (public contract) law and process in Massachusetts and Oregon, led by chief procurement officers from each of the respective states. A more complete description is contained in Chapter 6.

- Objective: Review recent Montana experiences with contracting for services and contract enforcement, paying particular attention to large-scale contracts and the lessons learned from the experiences

Action: The Committee heard testimony from Executive Branch and Legislative Branch staff on a variety of contracts, including the recent MT PRRIME/SABHRS (legacy management systems) and POINTS (revenue systems) initiatives. A more detailed discussion of the testimony, findings, and conclusions is contained in Chapter 5.

- Objective: Examine the possibilities for providing agencywide consistency in the contracting process and enhancing protection of the state's interests in contract negotiation and enforcement

Action: The Committee focused primarily on contracting processes within the Department of Administration, although some attention was given to contracting processes elsewhere, including the Department of Transportation, the Department of Corrections, and the Department of Public Health and Human Services. At the most basic level, each agency generally follows the statutory law applicable to it, as well as applicable administrative rules. Administrative processes may vary from agency to agency and even within an agency. Such variations may be due to the nature and scope of the procurement from which a contract results. More information on contracting consistency is provided in Chapter 3.

- Objective: Examine the current level of review and technical support provided during the development of a contract.

Action: Similar to the topic of consistency, the SAIC focused on the Department of Administration, although considerable testimony and information was also provided by the Department of Transportation. In short, the levels of review and technical support vary, both among and within agencies. The variations are somewhat due to differences in the nature and scope of procurements and contracts, but are also partially due to the differing capacities of the agencies, e.g., number of available staff, fiscal flexibility, in-house expertise and access, etc. Further exploration of these matters is offered in Chapter 4.

37336006-16-3506

Montana

EXHIBIT 7
DATE 3-2-01
HB SB090

Special Member Ballot

Should legislation be passed that would eliminate the current bidder preference for Montana corporations when bidding on supplying goods to state government?

61% **Yes** 34% **No** 5% **Undecided**

Background: Passed in 1961 to help develop Montana businesses, the current bidder preference law allows registered corporations residing in Montana a preference of from three percent to eight percent when bidding to supply goods to state and local governments. The percentage varies according to residency; Montana made products and printing contracts. This preference is not afforded non-corporate business entities, nor is it allowed in the bidding of services to state government. It is also not allowed when utilizing Federal dollars. In 1988, the legislature excluded contractors bidding on state work from the preference at there quest of the Montana Contractors Association, which stated it was being harmed in bidding on out-of-state jobs. Other states were penalizing Montana contractors because contractors from their states were penalized in Montana by the preference law favoring Montana contractors. A bill to eliminate the bidder preference in Montana will be introduced in the 2001 legislative session, which is expected to also include a clause that will allow a reciprocal preference when businesses from states that also have a preference law are competing with Montana firms.

Proponents note that the majority of states have dropped their bidder preferences because of the very reason the contractors in Montana wanted to drop it in 1988. Other states without a preference law penalize, or even prohibit from bidding, firms from states with bidder preference laws, according to the Montana Department of Administration (DOA), which oversees all procurement in state government. Just this year, Intelicom, Inc. of Belgrade was denied a $150,000 contract in New York because of Montana's preference law, even though it was low bidder. Proponents of eliminating the law argue that times have changed. More of Montana's businesses are doing work outside of the state than in 1961when the law was passed. Only eight states today offer instate preferences. The DOA notes that the current preference law actually is not as effective as it may be perceived to be. Only 1.5 percent of all contracts in the past two years have been affected by the law, costing the state a mere $9,000 in extra contract expense over the low bidders during the same time period. Finally, proponents say the law is hurting economic development. Why would a business relocated to Montana when it will be at a three to eight percent disadvantage when bidding out-of-state contracts?

Opponents argue if it isn't affecting that many bids, but may be helping a few Montana businesses, why not keep the law on the books? The Department of Administration admits the law isn't difficult to administer. Most businesses supplying goods to the State of Montana are not aware of the intricacies of the law. Many do not know you have to register with the DOA to qualify for the preference. The DOA should publicize the opportunities for small businesses to utilize the law, rather than try to eliminate it, thereby taking a proactive approach to helping small business in the state.

We need your input! Please mark your answer to this special ballot and fax to the NFIB State Director Riley Johnson at the NFIB/Montana office at (406) 449-4218. This issue may be considered by the legislature as early as Jan. 25! Please do not delay fax your response by Tuesday, Jan. 23, 2001. If you have any questions, please call the NFIB/Montana office at (406) 443-3797.

HOUSE OF REPRESENTATIVE

ROLL CALL

STATE ADMINISTATION COMMITTEE

DATE 3/2/01

NAME	PRESENT	ABSENT	EXCUSED
REP. ALLAN WALTERS, CHAIRMAN	X		
REP. DEBBY BARRETT, V.C. MAJORITY	X		
REP. TOM DELL, V.C. MINORITY	X		
REP. DOUG MOOD			X
REP. FRANK SMITH	X		
REP. DEE BROWN	X		
REP. MICHELLE LEE	X		
REP. LARRY LEHMAN	X		
REP. RALPH LENHART	X		
REP. ALAN OLSON	X		
REP. NORMA BIXBY	X		
REP .RICK RIPLEY	X		
REP. CLARICE SCHRUMF	X		
REP. HOLLY RASER	X		
REP. GAY ANN MASOLO	X		
REP. HAL JACOBSON	X		
REP. DON HEDGES	X		
REP. LARRY JENT	X		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 205** (third reading copy – blue) **be concurred in**.

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Donald Hedges

- END -

Committee Vote:
Yes 18, No 0.

10:55
3-7

COMMITTEE ABSENTEE BALLOT

Date: 3/2/01

I hereby authorize Rep. Tom Dell

to cast my vote(s) as follows:

All bills, amendments + executive action —

Representative Tom Dell

COMMITTEE PROXY

DATE March 2, 2001

I request to be excused from the State Ad. Committee meeting this date because of other commitments. I desire to leave my proxy vote with Bobby Barnett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
SB 205	V	

SENATE BILL/AMENDMENT	AYE	NO

Rep. [signature]

(Signature)

S:\HOUSE STATE ADMIN FORMS\committee proxy.frm

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
HOUSE STATE ADMINISTARTION COMMITTEE

DATE 3/2/01

BILL NO. SB90 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O (I)	Sheryl Olsen	Admin's Room 165	DOA
(P) O I	Tryg Dahle	310 Andrea Drive Belgrade, MT	Intelicom Inc
(P) O I	Tom Wells	P.O. Box 87 Bozeman, MT 59771	Business Interest
(P) O I	John Karst	201 Central Ave Great Falls MT	Moore No. America
P O (I)	Nick RoTERING	DEPT / TRANSPORTATION	OOT
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
HOUSE STATE ADMINISTARTION COMMITTEE

DATE 3/2/01

BILL NO. SB 228 SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	BERT OBERT	HELENA	HIWAY PATROL
(P) O I	TOM BUTLER	HELENA	"
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

HOUSE OF REPRESENTATIVE

ROLL CALL

STATE ADMINISTATION COMMITTEE

DATE 3/8/01

NAME	PRESENT	ABSENT	EXCUSED
REP. ALLAN WALTERS, CHAIRMAN	X		
REP. DEBBY BARRETT, V.C. MAJORITY	X		
REP. TOM DELL, V.C. MINORITY	X		
REP. DOUG MOOD			
REP. FRANK SMITH	X		
REP. DEE BROWN	X		
REP. MICHELLE LEE	X		
REP. LARRY LEHMAN	X		
REP. RALPH LENHART	X		
REP. ALAN OLSON	X		
REP. NORMA BIXBY	X		
REP .RICK RIPLEY	X		
REP. CLARICE SCHRUMF	X		
REP. HOLLY RASER	X		
REP. GAY ANN MASOLO	X		
REP. HAL JACOBSON	X		
REP. DON HEDGES	X		
REP. LARRY JENT	X		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 10** (third reading copy – blue) **be concurred in as amended**.

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Douglas Mood

And, that such amendments read:

1. Page 8, line 1.
Strike: "taxation"
Insert: "transportation"

2. Page 12, line 6.
Strike: "and"

3. Page 12, line 8.
Following: "regents"
Insert: ";
(h) promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;
(i) bring together representatives of state and local government for consideration of common problems;
(j) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;
(k) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;
(l) promote concise, consistent, and uniform regulation for local government;
(m) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;

Committee Vote:
Yes 18, No 0.

(n) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;

(o) make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:

(i) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;

(ii) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;

(iii) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and

(iv) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and

(p) conduct interim studies as assigned"

4. Page 12, line 24.
Strike: "**taxation**"
Insert: "**transportation**"
Strike: "taxation"
Insert: "transportation"

5. Page 13, line 2.
Following: "functions"
Insert: "for the public employee retirement plans and"

6. Page 16.
Following: line 15
Insert: " "NEW SECTION. **Section 21. Coordination instruction.** If [this act] and Senate Bill No. 137 are both passed and approved, Senate Bill No. 137 is void.
Renumber: subsequent section

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 184** (third reading copy – blue) **be concurred in as amended.**

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Alan Olson

And, that such amendments read:

1. Page 1, line 24.
Strike: "and"

2. Page 1, line 25.
Following: "2-15-1506"
Insert: "; and
(m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members"

- END -

SB 10:55 3-9

Committee Vote:
Yes 18, No 0.

531459SC.hdc

HOUSE STANDING COMMITTEE REPORT

March 8, 2001

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 236** (third reading copy – blue) **be concurred in**.

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Edith Clark

- END -

Committee Vote:
Yes 18, No 0.

531029SC.hdc

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 131** (third reading copy - blue) **be concurred in**.

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Paul Sliter

- END -

Committee Vote:
Yes 16, No 2.

531028SC.hdc

HOUSE STANDING COMMITTEE REPORT

March 8, 2001

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 90** (third reading copy - blue) **be concurred in**.

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Edith Clark

- END -

Committee Vote:
Yes 18, No 0.

531027SC.hdc

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **State Administration** recommend that **Senate Bill 228** (third reading copy – blue) **be concurred in**.

Signed: Allan Walters
Representative Allan Walters, Chair

To be carried by Representative Douglas Mood

- END -

Committee Vote:
Yes 18, No 0.

531026SC.hdc

COMMITTEE PROXY

DATE March 8, 2001

I request to be excused from the H. Admin. Committee meeting this date because of other commitments. I desire to leave my proxy vote with Debby Barrett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
SB 228	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. [signature]

(Signature)

S:\HOUSE STATE ADMIN FORMS\committee proxy.frm

(1)

LiteSys inc. Intelicom inc.

"Safety Begins with Good Communication"™

...TE STATE ADMIN.
...IT NO. 1
DATE 1-25-01
BILL NO. SB90

Negative Effects of Bid Preferences on a Montana Business

In 1999, Intelicom Inc. lost the opportunity of over $150,000 worth of business from the State of New York as a direct result of retaliatory legislation against Montana who has what they call "discriminatory jurisdiction." We refer to this "discrimination" as "contract preferences." This lost opportunity translates into 1 and 1/2 jobs the people of Montana did not receive that year as a price to keep this legislation. This was for only one company for business lost in only one state for only one year. New York is an extreme case, but the potential volume of business is significant for a small growing Belgrade, Montana company where every contract counts. In fact, we barely broke even that year after spending 2 years trying to get their business.

Most states that we do business with have reciprocal penalties tacked on to our bid that give us a bidding disadvantage. This bidding disadvantage not only gives a bidding advantage to their in-state bidders, but is also a bidding disadvantage for us against bidders from other states who do not have this bidding penalty added because they have no preference laws to reciprocate against.

A superficial view of this issue may lead one to believe that a preference law gives Montana residents a greater advantage over out-of-staters with respect to state bidding. A larger view reveals that we are so busy trying to figure out how to split up our relatively small pot of money within the state, we are ignoring a huge opportunity to bring a lot more money into Montana from other states.

Like it or not, we are increasingly faced with having to find more ways to be competitive in a national and worldwide economy. Facing thirty-four (34) other states who penalize us from doing business with their state governments is not what anyone can call business friendly policy for the state of Montana. It is a discouragement for businesses to stay here, especially if a company is completely barred from doing business with one of the largest markets in the country.

There has been a lot of talk about improving business climate in Montana to provide better, higher paying jobs. As well meaning as the preference legislation was originally, it has, unfortunately, become a bane to our economic well-being.

Revising this law will not only provide more opportunity to stimulate our state's economy, it will reduce the cost of administration by eliminating the special handling required by our state procurement when these preferences are claimed on bids.

Respectfully,

Trygve F. Dahle III, President
Intelicom Incorporated

P.O. Box 239 • Belgrade, MT 59714-0239 www.litesys.com Phone: (406) 388-9317 • Fax: (406) 388-9319

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232

JOSEPH H. BOARDMAN
COMMISSIONER

GEORGE E. PATAKI
GOVERNOR

April 7, 1999

Mr Lonnie Bos
Intelicom, Incorporated
P O. Box 239
Belgrade. MT 59714-0239

Dear Mr Bos,

Thank you for your recent bid on Portable Truck-Mounted Variable Message Signs Unfortunately, I must inform you that I have recently become aware of a circumstance which will prohibit the State of New York from awarding a contract to Intelicom

Specifically, a New York State Statute known as the Omnibus Procurement Act of 1992 (amended 1994), provides that if a bidder's principal place of business is located in a state that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 amendments (Chapter 684, Laws of 1994) *requires that they be denied contracts that they would otherwise obtain.*

According to information on file with the New York State Department of Economic Development, the State of Montana maintains a preference to in-state suppliers in its procurement programs. This in-state preference serves to deny award of Montana contracts to certain out-of-state (including New York State) businesses attempting to do business in your state Since Intelicom's principal place of business is located in Montana, I have no choice but to deny award of this contract

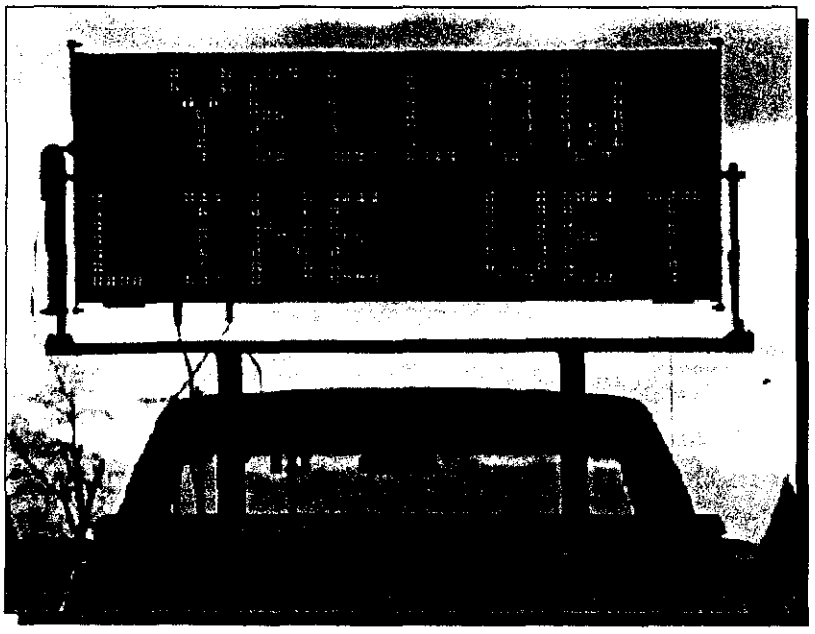
I regret that this action became necessary, but please understand that I must abide by New York State Statute. I might suggest that you contact your State Senator or Assemblyman in hopes of persuading the State of Montana to change its procurement practices so as to remove in-state preference laws. If you wish further information regarding this statute, contact Ms. Katherine Loucks, Division for Small Business, Empire State Development, One Commerce Plaza, Albany, New York 12245 Ms Loucks can be reached by telephone at (518) 473-0499

Regretfully,

CHRISTOPHER J. MAGIN
Purchasing Agent, NYSDOT

LiteReader®Vehicle Mounted Message Signs

"Safety Begins With Good Communication"™



LiteReader® Model 1020A VCMS

Message Examples

PAINT STRIPING

What to look out for.	"YELLOW LINE WET"
What you are about.	"PAINT STRIPER AHEAD"
What to avoid.	"STAY OFF WHITE LINE"
What not to do.	"DO NOT PASS"

INCIDENT RESPONSE

Information.	"ACCIDENT AHEAD"
Status report.	"FLOODING ROAD CLOSED"
Warning.	"DEBRIS ON ROAD"
Give direction.	"MERGE LEFT"

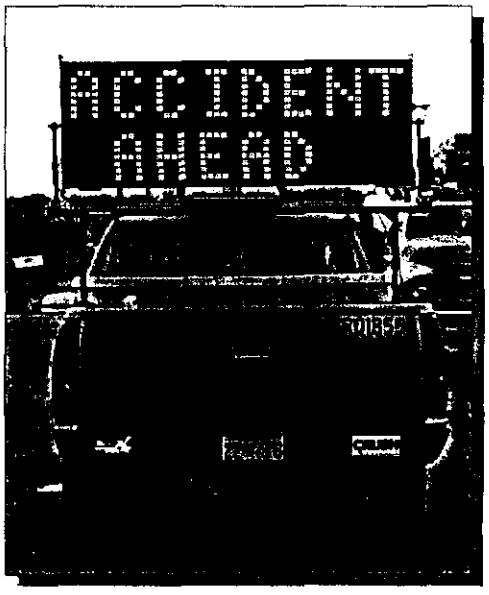
STREET & HIGHWAY MAINTENANCE

Someone is out there.	"WORKERS ON ROAD"
Watch out for...	"FRESH TAR"
Kind of work.	"BRIDGE WORK"
Slow moving equipment.	"SWEEPER AHEAD"

Safety and Traffic Information

LiteSys® Inc. was the first company in North America to design, manufacture and sell LED signs specifically for vehicle mounted applications. The LiteReader® Vehicle Changeable Message Signs (VCMS) were designed specifically to withstand vibration, pounding and severe environmental conditions encountered in roadway environments.

We have introduced several innovations which have been quickly and widely adopted as valuable in the industry. Among them is the legibility enhancing Pixel Focal Configuration™ (PFC). Another widely accepted innovation that LiteSys® Inc. introduced to the industry was the handheld terminal for simple message programming and message selection.



Manage traffic congestion.

LiteSys™ Inc. Intelicom Inc.

PO BOX 239, Belgrade, MT, 59714
Ph. 406-388-9317 info@LiteSys.com

(2)

SENATE STATE ADMIN.
EXHIBIT NO. 2
DATE 1-25-01
BILL NO. SB90

Montana

37336006-16-3506

Special Member Ballot

Should legislation be passed that would eliminate the current bidder preference for Montana corporations when bidding on supplying goods to state government?

61% Yes 34% No 5% Undecided

Background: Passed in 1961 to help develop Montana businesses, the current bidder preference law allows registered corporations residing in Montana a preference of from three percent to eight percent when bidding to supply goods to state and local governments. The percentage varies according to residency; Montana made products and printing contracts. This preference is not afforded non-corporate business entities, nor is it allowed in the bidding of services to state government. It is also not allowed when utilizing Federal dollars. In 1988, the legislature excluded contractors bidding on state work from the preference at there quest of the Montana Contractors Association, which stated it was being harmed in bidding on out-of-state jobs. Other states were penalizing Montana contractors because contractors from their states were penalized in Montana by the preference law favoring Montana contractors. A bill to eliminate the bidder preference in Montana will be introduced in the 2001 legislative session, which is expected to also include a clause that will allow a reciprocal preference when businesses from states that also have a preference law are competing with Montana firms.

Proponents note that the majority of states have dropped their bidder preferences because of the very reason the contractors in Montana wanted to drop it in 1988. Other states without a preference law penalize, or even prohibit from bidding, firms from states with bidder preference laws, according to the Montana Department of Administration (DOA), which oversees all procurement in state government. Just this year, Intelicom, Inc. of Belgrade was denied a $150,000 contract in New York because of Montana's preference law, even though it was low bidder. Proponents of eliminating the law argue that times have changed. More of Montana's businesses are doing work outside of the state than in 1961when the law was passed. Only eight states today offer instate preferences. The DOA notes that the current preference law actually is not as effective as it may be perceived to be. Only 1.5 percent of all contracts in the past two years have been affected by the law, costing the state a mere $9,000 in extra contract expense over the low bidders during the same time period. Finally, proponents say the law is hurting economic development. Why would a business relocated to Montana when it will be at a three to eight percent disadvantage when bidding out-of-state contracts?

Opponents argue if it isn't affecting that many bids, but may be helping a few Montana businesses, why not keep the law on the books? The Department of Administration admits the law isn't difficult to administer. Most businesses supplying goods to the State of Montana are not aware of the intricacies of the law. Many do not know you have to register with the DOA to qualify for the preference. The DOA should publicize the opportunities for small businesses to utilize the law, rather than try to eliminate it, thereby taking a proactive approach to helping small business in the state.

We need your input! Please mark your answer to this special ballot and fax to the NFIB State Director Riley Johnson at the NFIB/Montana office at (406) 449-4218. This issue may be considered by the legislature as early as Jan. 25! Please do not delay fax your response by Tuesday, Jan. 23, 2001. If you have any questions, please call the NFIB/Montana office at (406) 443-3797.

(3)

SUMMARY OF ISSUES
SB 90
REVISING GOVERNMENT CONTRACTING LAWS

SENATE STATE ADMIN.
EXHIBIT NO. 3
DATE 1-25-01
BILL NO. SB90

1. **Procurement Preferences.** Replaces Montana resident and Montana-made preference with a "reciprocal preference" for supplies (already used for construction and public works) to help Montana businesses get business with 34 other state governments. Reciprocal preference for supplies will not apply to local governments.

2. **Revisions to the Montana Procurement Act.**

   a. Clarifies that the Act applies: 1) to procurements that involve no cost to the State, but will generate income for a vendor; and 2) to the procurement of supplies and services unless a statute specifically exempts an agency from the Act.

   b. Options for Unsuccessful Solicitations. Directs the Department of Administration on what to do in the event of an unsuccessful solicitation – either cancel and start over by enlisting more vendors to respond or if it is determined that no more vendors will respond to a second solicitation, the department may then directly negotiate with a vendor in order to receive the supply or service.

   c. Pilot Alternative Procurement Methods. Permits the Department of Administration to authorize pilot alternative procurement methods such as on-line reverse auctions, solution-based contracts, "share-in-savings" projects or partnering with a non-profit organization or the private sector. This option ends in 2005.

   d. Sole Source. Includes the ability to make a sole source purchase "when there is only one acceptable or suitable source for a supply or service."

3. **Clean Up:** 1) Provides definition of "directly involved" concerning when former public officials can obtain contracts; 2) removes requirement for Governor's approval of vehicle purchases outside of the normal bi-annual bid; 3) clarifies which interest rate applies when a state payment is late for various reasons; 4) includes "offerors" as well as bidders in prohibition on collusion; 5) includes "offerors" and "proposals" in definition of "responsive bidder," and; 6) clarifies language concerning information technology purchases.

(4)

Amendments to Senate Bill No. 90
1st Reading Copy

SENATE STATE ADMIN.
EXHIBIT NO. 4
DATE 1-25-01
BILL NO. SB90

Requested by Senator Pete Ekegren

For the Senate State Administration Committee

Prepared by John MacMaster
January 24, 2001 (2:26PM)

1. Page 20, line 19.
Following: "with"
Insert: "or has exchanged letters of understanding with"

- END -

MONTANA SENATE
2001 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 1-25-01

NAME	PRESENT	ABSENT	EXCUSED
SEN. DON HARGROVE, CHAIRMAN	✓		
SEN. JOHN BOHLINGER, VICE CHAIRMAN	✓		
SEN. ED BUTCHER	✓		
SEN. PETE EKEGREN	✓		
SEN. JIM ELLIOTT	✓		
SEN. EVE FRANKLIN	✓		
SEN. FRED THOMAS			✓
SEN. KEN TOOLE	✓		

SENATE STANDING COMMITTEE REPORT

January 25, 2001

Mr. President:

We, your committee on **State Administration** report that **Senate Resolution 4** (first reading copy - white) **be adopted**.

Signed: Don Hargrove
Senator Don Hargrove, Chair

- END -

Committee Vote:
Yes 8, No 0.

201213SC.sjo

DATE 1-25-01

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB90

Exec. Action - SR4, SB256

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE	Lobo
Tryg Dahle	388-9317	Intelicom Inc	SB90	X		
MARVIN EICHOLTZ	444-3318	DOA	SB90			X
TOM EBZERY	441-7531	MT CONTRACTORS	SB90	X Amend		
Riley Johnson	443-3797	NFIB	SB90	X Brief Pvt.		
Sheryl (mnor) Olsac	444-3315	DOA				X
WEBB BROWN	442-2405	MT CHAMBER	SB90	X		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
2001 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 1-26-01

NAME	PRESENT	ABSENT	EXCUSED
SEN. DON HARGROVE, CHAIRMAN	✓		
SEN. JOHN BOHLINGER, VICE CHAIRMAN	✓		
SEN. ED BUTCHER	✓		
SEN. PETE EKEGREN	✓		
SEN. JIM ELLIOTT	✓		
SEN. EVE FRANKLIN	✓		
SEN. FRED THOMAS			✓
SEN. KEN TOOLE	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **State Administration** report that **Senate Bill 90** (first reading copy - white) **do pass as amended**.

Signed: Don Hargrove
Senator Don Hargrove, Chair

And, that such amendments read:

1. Page 20, line 16.
Following: "foreign country"
Insert: ", or province or other political subdivision of that country,"

2. Page 20, line 18.
Following: "foreign country"
Insert: ", or province or other political subdivision of that country"

3. Page 20, line 19.
Following: "with"
Insert: "or has exchanged letters of understanding with"
Following: "foreign country"
Insert: ", or province or other political subdivision of that country,"

4. Page 20, line 21.
Following: "foreign country"
Insert: ", or province or other political subdivision of that country"

5. Page 20, line 22.
Following: "foreign country"

Committee Vote:
Yes 8, No 0.

211112SC.srf

SRP

Insert: ", or province or other political subdivision of that country,"

6. Page 20, line 24.
Following: "foreign country"
Insert: ", or province or other political subdivision of that country,"

7. Page 20, line 27.
Following: "foreign country"
Insert: ", or province or other political subdivision of that country,"

8. Page 20, line 28.
Following: "foreign country"
Insert: ", or province or other political subdivision of that country"

- END -

SENATE STANDING COMMITTEE REPORT

January 26, 2001

Mr. President:

We, your committee on **State Administration** report that **Senate Resolution 3** (first reading copy – white) **be adopted**.

Signed: _____
Senator Don Hargrove, Chair

- END -

Committee Vote:
Yes 8, No 0.

211550SC.sjo

3A

DATE 1-26-01

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: SB 275

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
C. HAL MANSON	458-9278	AMERICAN LEGION	SB275	✓	
DAN ANTONIETTI	443.2597	VFW	SB275	✓	
Ed Hanson	406 587 4073	Selective Service	SB275	X	
DAN LIEBERG	443-4214	Selective Service	SB275	X	
Jim BARKNECHT	442-9600	PRIVATE CITIZEN	SB275	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY